T&E AGENDA: 12-05-11
ITEM: (d)(3)

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: TRANSPORTATION AND ENVIRONMENT COMMITTEE

FROM: Kerrie Romanow

SUBJECT: STAKEHOLDER PROCESS FOR **PROHIBITION OF EXPANDED POLYSTYRENE FOOD WARE**

DATE: 11-17-11

Approved [signature] Date 11/18/2011

RECOMMENDATIONS

1. Accept the report on the stakeholder process and analysis of policy alternatives to reduce Expanded Polystyrene (EPS) food service ware litter.

2. Direct staff to:

   a. Actively support a regional approach to countywide adoption of prohibitions to eliminate the use of EPS food service ware by Santa Clara County restaurants as recommended by the Santa Clara County Recycling and Waste Reduction Commission;

   b. Return to the Transportation and Environment Committee in Fall 2012 with a recommendation for an ordinance to prohibit the use of EPS food service ware at food service establishments in San José for Council consideration, including an analysis of implementation, cost, and stakeholder outreach plans, if countywide action is not achieved by June 2012; and

   c. Support legislation that would implement a state-wide program that would significantly reduce the use of EPS food service ware and that would remove any restriction on the City's ability to regulate the distribution of these materials for the purposes of reducing litter from this source.

OUTCOME

Approval of these recommendations would facilitate reducing litter from EPS food service ware. These recommendations will support the City's compliance with the Municipal Regional Stormwater Permit by providing trash reduction credit towards the mandated goal of 40 percent trash reduction by 2014. These actions will make a demonstrable improvement in the conditions

of San José's creeks and neighborhoods by removing one of the most ubiquitous, highly visible, and persistent pollutants from our waterways and streets.

EXECUTIVE SUMMARY

At the February 7, 2011 Transportation and Environment Committee meeting, the Committee accepted staff's update on the development of the City's Trash Load Reduction Plan including commencement of a stakeholder input process to evaluate alternatives to reducing Expanded Polystyrene (EPS) Food Service Ware litter such as a potential ban at food service establishments citywide. The Committee further requested staff study alternatives to a ban, including expanding EPS recycling, and to continue efforts at the State level for legislative action on this issue.

The Green-To-Go public input process was created to engage the community and gather input on the potential alternatives for reducing EPS litter. Approximately 4,800 San José restaurants were sent information about the meetings. In addition, 350 small restaurants were individually visited and encouraged to attend. Seven Green-To-Go meetings were conducted between June and November 2011. A website was established as a means of making meeting notes and presentations broadly available to the public. The meetings were structured to allow for a sharing of perspectives. Over the course of the meetings, the focus moved through identifying the issue, identifying alternative policy solutions, evaluating the alternatives, and identifying a preferred solution. The criteria for evaluation was established at the first meeting. During the identification of policy alternatives phase of the process, key stakeholders were invited to make 20 minute presentations to represent the broadest range of possible perspectives. Representatives from business as well as the environmental community participated. The criterion established at the first meeting facilitated a cost impact analysis for the range of alternatives presented by the stakeholders.

The analysis identified eight alternatives and ranked them based on their expected effectiveness in controlling EPS food service ware litter and on the estimated costs. Details and findings from the alternatives evaluation are presented in the Analysis section of this memorandum.

BACKGROUND

Trash in its many forms, including but not limited to litter or illegal dumping, has become a significant environmental issue in San José creeks and neighborhoods and for communities throughout the Bay Area. Local creeks, the San Francisco Bay, and the Pacific Ocean have become the final repositories for consumer items and waste materials including EPS food service ware. According to the California Water Resources Control Board's assessment of San Francisco Bay Area creeks, EPS comprises 55 percent of trash observed in Bay Area creeks, and 11 percent by volume of all trash found in the storm drain system is EPS according to a comprehensive Caltrans trash study published in 2000. This same study found that plastic film, including single use plastic bags, comprise 12 percent of all trash. The unsightliness of EPS

litter creates an aesthetic blight that negatively impacts the livability of City neighborhoods and the water quality in local creeks. Because EPS is lightweight and therefore floats, it readily travels from land to inland waterways and out to the ocean. EPS easily breaks into small pieces which are commonly mistaken for food as birds and other marine wildlife ingest these plastic pieces. Due to the negative water quality impacts of all types of trash, reducing the amount of trash in waterways has become a priority concern to citizens, municipalities, and water quality regulators. Several local waterways have been formally listed as "impaired by trash" under the federal Clean Water Act. These include Silver Creek, Coyote Creek, Saratoga Creek, San Tomas Aquino Creek, the Guadalupe River, and the lower San Francisco Bay shoreline.

The City is regulated under the Municipal Regional Stormwater NPDES Permit (Order R2 2009 0074), also known as the Stormwater Permit, as a co-permittee. The Stormwater Permit is in effect from December 1, 2009 through November 30, 2014. It specifies necessary actions to reduce the discharge of pollutants, including trash, into stormwater to the maximum extent practicable and to effectively prohibit non-stormwater discharges into the municipal storm sewer system to protect local creeks and the Bay. The Stormwater Permit requires all Permittees to implement measures to reduce trash loads from storm sewer systems by 40 percent by 2014. It also includes targets intended for future permit cycles - 70 percent reduction by 2017 and 100 percent by 2022.

Municipalities will be granted trash reduction credits toward meeting the trash reduction goals under the Stormwater Permit for implementing programs to prohibit single-use plastic bags and EPS food service ware. Specific proposed trash reduction credits for these actions are in the range of 6 to 12 percent for prohibitions on single use bags and 2 to 8 percent for prohibitions on EPS food service ware; these credits would apply toward the 40 percent reduction needed to be in compliance by by 7/1/2014. The proposed trash reduction credits related to EPS under the Permit are 2 percent for prohibitions of EPS at City events and City purchase and 8 percent for a prohibition of EPS for all food service vendors.

On October 7, 2008, Council approved San José's partnership with Save the Bay for the Cities Keep It Clean initiative, now known as the Clean Bay Project. This partnership affirmed the City's commitment to develop a strategy to dramatically reduce the use of non-biodegradable/non-compostable take-out food containers at local food establishments through ban or fee programs.

ANALYSIS

Green-To-Go Stakeholder Process

On February 7, 2011, staff presented the City's trash reduction strategy to the Transportation & Environment Committee. As part of this strategy, staff recommended the initiation of a stakeholder process to gain public input to consider a prohibition on the use of EPS food service ware at eating establishments in San José. As a litter prevention measure, the Committee directed staff to investigate the viability of increasing EPS recycling through the City's recycling contracts and to support Statewide efforts regarding EPS regulation. The purpose of the

stakeholder process, officially named Green-To-Go, was to gain public input regarding potential policy action to reduce litter from EPS food service ware containers. Environmental Services Department staff hosted a series of seven Green-To-Go stakeholder meetings between June and November 2011. Invited stakeholders included the restaurant community, plastics industry, environmental groups, and members of the community at large. Meetings were held in the early afternoon – after the lunch rush and before dinner – in an effort to make it convenient for restaurant owners wishing to attend. An eighth meeting has been tentatively scheduled for February and, if needed, will be used to gather stakeholder input on next steps.

The Green-To-Go meetings were organized to present the issue and provide structure for the discussion and evaluation of policy options. Time was set aside in the process to allow interested stakeholders to discuss the issue, present and evaluate ideas on policy alternatives, and identify the policy alternatives that best support the following criteria and objectives:

- Promptly reduce trash in order to meet stormwater permit requirements
- Minimize costs to the City, ratepayers, and businesses
- Estimate implementation costs and litter reduction benefits

The Green-To-Go process was introduced to the San José restaurant community in June 2011 with a direct mail announcement that was sent to 4,800 San José restaurants. City staff also conducted 350 direct visits to mostly small and ethnic restaurants from June to July 2011. City staff contacted all ethnic business chambers announcing the stakeholder process with a letter inviting chamber members to participate in the process. The letter also offered to have a presentation by City staff at the chambers' regular meeting. As part of this outreach effort, staff made a presentation to the San José Hispanic Chamber of Commerce and had contact with San José-Silicon Valley Chamber of Commerce. In addition, staff made a presentation to the San José Small Business Commission.

The City created a Green-To-Go website in order to facilitate the communication with stakeholders and the broader San José community. The website (http://www.sanjoseca.gov/esd/stormwater/green-to-go.asp) was updated after each meeting with meeting notes, and copies of the presentations, as well as announcements of time and location for the next meeting.

The Green-To-Go process provided an opportunity for stakeholders to make formal presentations to the group. The intent in providing this opportunity was to gather alternative points of view for stakeholders and groups that would be affected by any policy action regarding EPS food service ware. Staff worked to ensure that the information presented was balanced and that there were opportunities to offer new ideas that may meet the objective of reducing EPS food service ware litter in creeks. All groups requesting to make a presentation were provided time to do so.

Save the Bay

Save the Bay, a 501(c)(3) nonprofit organization that works to protect, restore, and celebrate San Francisco Bay, framed EPS litter as a water quality issue and stated that recycling EPS food

service ware was unfeasible and not economically sustainable. Save the Bay advocated for a ban on EPS food service ware.

Clean Water Action

Clean Water Action, a 501(c)(4) nonprofit organization working for clean, safe and affordable water and the prevention of health-threatening pollution, also framed the issue as primarily related to water quality and highlighted the trash reduction requirements of the Permit. Clean Water Action cited a series of three annual street litter audits conducted in the City of San Francisco right after the imposition of their EPS food service ware ban. These litter audits documented a 36% reduction in EPS food service ware between 2007 and 2009 after the ban's adoption. Clean Water Action supported a ban on EPS and also presented a cost comparison for alternative products that asserted the availability of cost competitive EPS substitutes. Clean Water Action further presented evidence that the cost of non-plastic alternatives was falling while costs for products made from petroleum feedstock trend up with the rising cost of oil. Lastly, they presented information stating that Styrene, the key component of EPS, is a suspected carcinogen.

Save Our Shores

Save Our Shores, a 501(c)(3) nonprofit organization that works to protect and promote the ecological integrity of the Monterey Bay National Marine Sanctuary, documented the ubiquity of EPS on Santa Cruz beaches. Save Our Shores also presented data that documented a litter decline of 61% since the imposition of an EPS food service ware ban in Santa Cruz. Save Our Shores further described the process of presenting data, working with the restaurant community, and the development of hardship exemptions and enforcement to ensure compliance.

DART Container Corporation & California Restaurant Association

DART Container Corporation, a leading producer of single-use foodservice products, asserted the environmental qualities of EPS by detailing the lightweight and insulating qualities of EPS as well as its recyclability. DART also mentioned that from a price standpoint EPS was superior to any alternative and that DART manufactures its products in California. DART Container Corporation also presented a quote from a leading researcher that Stryrene, as formulated in EPS, is safe for use in food containers. DART asserted that the City should limit its efforts to control litter to actions such as the expansion of infrastructure retrofits, public education, and enforcement of anti-littering laws. These suggested measures would focus on litter broadly and not target EPS. DART also shared information on the fee-based ESP recycling services they provide. The California Restaurant Association, an organization that acts as a voice for the California food service industry and acts to protect and promote its success, presented cost information showing that alternatives can be two to three times the cost of EPS. The Restaurant Association also stated that increasing government regulation erodes the typical 4 – 6 percent profit margins of restaurants. They further raised the possibility that restaurant workers may lose their jobs as regulatory costs increase. DART finished their presentation by discussing how bans produce increases in litter from alternative packaging. Their presentation recommended that the City expand EPS recycling and referred to a number of sub-processes that related to supporting EPS recycling.

Findings from the Stakeholder Process

In addition to the organizations specified above, the stakeholder meetings were attended by a variety of other interested parties including restaurant representatives, community members, food service ware distributors, local creek and watershed groups, and students from San José State and Santa Clara University. In general, the stakeholders recognized the negative impacts of EPS litter, and acknowledged the challenges and benefits of EPS. While many of the community members attending the meetings were supportive of a ban; the feedback from local restaurant operators in attendance varied. Some operators were concerned over the resulting increase in costs, while a few shared their experience adapting to the change in other jurisdictions.

Stakeholders also discussed various findings regarding the risk of toxicity exposure from the use of expanded polystyrene as take-out food packaging. Save our Shores and Clean Water Action asserted that there is a potential threat of toxic exposure. DART provided information that Styrene in its formulation as EPS is safe for food storage. This issue is regulated federally through the Food and Drug Administration.

Discussions also focused on the observation that with San Francisco's EPS ban the City experienced a decrease in EPS, but saw an increase in litter from food packaging alternatives. This does not acknowledge the difference in the greater prevalence of EPS in creeks as opposed to streets and sidewalks. The San Francisco litter audits were conducted on public rights-of-way not creeks where EPS cups and clamshells are far more common. The reason for this difference is the manner in which paper and plastic react in the water environment as opposed to dry land. EPS is more common in creeks because it is a durable material that does not degrade. In contrast, paper is not as durable and degrades in the water environment. Thus, it is far less common in creeks. These conclusions are borne out in the data from the 2000 Caltrans study that examined trash and litter on the street and sidewalks as well as the storm drain system and found that paper was common in public rights-of-way but significantly less common in the storm drain system where it would be exposed to the stresses of hydrodynamic forces and quickly break apart and degrade. EPS food service ware litter floats, making it a clear blight in the City's creeks and communities. It easily breaks into small pieces that are difficult to clean-up. Since EPS does not degrade, it easily finds its way to San Francisco Bay and Pacific Ocean where it is very often mistaken for food by marine life.

Policy Alternatives

Staff has evaluated the policy alternatives presented. These policy alternatives have been ranked in the table below based on the criteria presented at the beginning of this analysis which was reviewed and discussed with the stakeholder group. The costs for these alternatives have also been evaluated in the development of the City's Trash Reduction Plan. The ranking of the various alternatives presented is as follows:

Table 1: Ranking of Stakeholder Identified Alternatives

Rank	Policy Alternative	Does the Alternative Promptly Reduce EPS Litter?	10-year Average Annualized Cost per 1% Reduction in Trash*
1	Prohibit Foam Take-out Containers	Yes.	$ 3,200
2	Increase "Hot Spot" Clean-up	Yes. Only in the clean-up area.	$ 6,300
3	Increase Anti-littering Enforcement	Maybe. Lag time between enforcement action and behavior change unknown.	$ 93,000
4	Increase Full Trash Capture Device Installation	Yes.	$ 90,000 to $ 164,000
5	Increase Street Sweeping from Monthly to Twice Monthly Citywide	Yes. Effectiveness depends on where additional sweeping in done and implementation of enhanced parking enforcement.	$ 533,000
6	Increase Public Litter Cans	Maybe. Dependent upon location.	TBD
7	Increase Anti-littering Public Education	No. Does not yield results in near-term. Considered an investment in long-term litter prevention.	N/A
8	Expand Foam Recycling	No.	N/A

*Initial estimates and may be subject to change based on development of the regional trash reduction crediting methodology.

This ranking takes into account the cost of implementation for each alternative as well as the effectiveness of the alternative for reducing EPS food service ware litter. Based on this analysis, the establishment of a ban on EPS food service ware presents an effective and cost efficient solution to a specific and unique pollutant.

Cost Impacts of Shifting from EPS

Understanding that EPS product alternatives have a higher per unit cost, the potential impact to local businesses was a key consideration in the stakeholder process. Staff conducted targeted

outreach to encourage small and ethnic restaurant operators to attend the stakeholder meetings, including conducting 350 site visits. While attendance from this targeted audience was limited, the meetings averaged only one to two restaurant operators per meeting, their feedback has been highly valued. Through this interaction, staff has gained a better understanding of how different types of restaurants would cope with a ban on EPS food service ware.

The cost impact of an EPS ban can vary from restaurant to restaurant and is highly dependent upon what product is substituted, how it is purchased, the quantity used by a restaurant, and the proportion take-out food sales represent for the business. Furthermore, the economic impacts to any specific restaurant are also dependent upon the proportion of total costs spent on disposable food service ware. While costs for an individual alternative clamshell or cup may be significantly higher, these products often represent a small share of a restaurants' total operating costs

The impacts could affect a small restaurant differently than a larger restaurant or chain. Small restaurants may purchase materials in smaller quantities, have limited access to discounted pricing, and operate on small profit margins. A preliminary analysis, conducted by staff and guided by input from key food service industry stakeholders, estimated that a switch from EPS food service ware to the next lowest cost non-EPS substitute would result in an increase in overall costs for a typical small restaurant of 1 to 4 percent. Since most restaurant operators treat cost information as proprietary, the exact impact of an increase in food take-out packaging supplies is difficult to determine. Staff has had discussions with restaurant operators and distributors of food service ware products who have demonstrated that EPS food service ware is the least costly take out packaging material available. However, research and informal discussions with industry members indicates that the cost of purchasing food service ware is small when compared to other restaurant operating costs such as labor, food, and leases. For example, on a $6 lunch, a 4 percent increase in prices adds an additional $0.24 to the price of the lunch. A restaurant changing from EPS to other types of take-out packaging would have to choose between absorbing this cost or passing this cost on to the restaurant customers.

With such a diverse set of communities having already implemented similar ordinances, staff interviewed 20 California communities for insight into their experience. Surveyed communities included the cities of San Francisco, Oakland, Palo Alto, Fremont, and Richmond. Staff learned many communities received no opposition to an EPS prohibition, while several had broad community support. Several communities had some local business groups oppose the ordinances and local restaurants initially voiced concerns about the change, including concerns about the increased cost for take-out packaging. These concerns subsided once the prohibition became effective. Many cities offered hardship exemptions and some communities prolonged the implementation timeline to allow businesses to more slowly adapt to the change. Enforcement is often complaint based while other communities integrate enforcement into existing restaurant inspection programs. The surveyed communities have no reports or information on restaurants closing as a direct result of an EPS ban.

Existing Prohibition on EPS at City Events

Effective May 1, 2010, the City banned EPS food service ware at all events on public property, including streets, plazas, paseos, and parks that are open to the public and where there would be a minimum of 1,000 attendees per day at events. Staff visits each event that is either certified as a Green Event or is the recipient of a Green Event Grant. While the ordinance has no mechanism for enforcement on the food vendors, the event manager is responsible for ensuring that the vendors are in compliance. The City certifies approximately twenty of the largest events every year to ensure that the event food vendors have been able to comply with the ban. Educating event organizers as well as vendors is essential to the on-going success of this program.

Challenges with EPS Recycling

Recycling was identified as a specific litter control measure staff was asked to research and evaluate. Staff found significant limitations regarding recycling as a control measure for litter. With the exception of a deposit on packaging, there is no demonstrated connection between litter prevention and recycling. The California Redemption Value on beverage containers is the prime example of this connection. Without a significant deposit on EPS food service ware containers, there is no incentive for people to not litter and return the EPS for a deposit. Recycling as a litter control measure is further limited by food contamination associated with EPS service ware. In spite of efforts to improve washing technology, soiled EPS food service ware is difficult and costly to clean due to the absorbing nature of the material. The difficulty in being able to sufficiently clean EPS food service ware, paired with the low commodity value of this material, makes it very difficult to recycle without local ratepayers and businesses providing significant subsidies to recyclers to collect and process the material. Even when food contaminated EPS is successfully collected, there are few to no manufacturing facilities, either domestic or abroad, willing to remanufacture it into new products due to the contamination. The City of San José's own curbside collection program has tried to divert this material to recycling on numerous occasions over the past 15 years. Recycling EPS food service ware remains unfeasible due contamination from its contact with food.

Staff conducted a phone survey of material recovery facilities in the South Bay Area, including Greenwaste, Allied Waste, and GreenTeam of San José and found that there were no large-scale recyclers currently accepting food contaminated EPS. DART Container Corporation did provide information on a recycling company operating in the Southern California desert that was accepting food-contaminated EPS service ware. No other recyclers of this material have been identified. Feedback from local recyclers indicated that recycling food-contaminated EPS is costly and that markets for this material are transient and unstable, making it difficult to collect on a sustained basis. Furthermore, storing sufficient volumes of EPS is costly for recycling facilities. Recyclers often prefer to use valuable storage space for the materials that have a greater market value. Recycling facilities that do accept EPS require that it be clean - free of food contamination. Under this condition, a limited number of recycling facilities in the Bay Area accept via drop-off non-food packaging EPS.

Countywide Action on EPS Food Service Ware

On June 27, 2011 the Santa Clara County Recycling and Waste Reduction Commission (RWRC) voted unanimously to recommend that City and Town Councils adopt a timeline for the prohibition on the use of EPS food service ware. Attached is a communication to the City of San José from the RWRC outlining their recommendations. The recommendation set forth a timeline with three tiers of compliance:

- Adoption of an outreach and education plan and adopt a prohibition on the use of the EPS food service ware at all City events and facilities by January 1, 2012 (Tier 1);
- Adoption of an ordinance banning the use of EPS food service ware by all food vendors within the City limits by July 1, 2012 (Tier 2); and
- Strongly consider a prohibition on the use of all non-recyclable food service ware by all food vendors by January 1, 2013 (Tier 3). For the purposes of this tier, EPS would not be considered recyclable.

All Santa Clara County jurisdictions adopting an EPS food service ware prohibition at the same time is a preferred approach and Staff continues to support the RWRC's recommendation. However, a survey of other Santa Clara County cities by staff indicates that, other than City of San José and the City of Palo Alto, no other Santa Clara County city is currently considering or has adopted a citywide ban on EPS food service ware.

EPS Food Service Ware Bans in Other California Communities

To date, 49 California cities and counties, including San Francisco, Oakland, and Los Angeles have established bans on EPS food service ware. These cities include:

- City of Alameda
- City of Albany
- City of Aliso Viejo
- City of Berkeley
- City of Burlingame
- City of Calabasas
- City of Capitola
- City of Carmel
- City of Del Rey Oaks
- City of Emeryville
- City of Fairfax
- City of Fremont
- City of Half Moon Bay
- City of Hayward
- City of Hercules
- City of Huntington Beach
- County of Monterey
- City of Monterey
- City of Newport Beach
- City of Oakland
- County of Orange
- City of Pacific Grove
- City of Pacific
- City of Palo Alto
- City of Pittsburg
- City of Richmond
- City of San Bruno
- City of San Clemente
- City and County of San Francisco
- City of San Juan Capistrano
- San Mateo County
- City of Santa Monica

- City of Laguna Beach
- City of Laguna Hills
- City of Laguna Woods
- City of Livermore
- City of Los Angeles
- County of Los Angeles
- City of Malibu
- City of Millbrae
- County of Marin
- City of Santa Cruz
- County of Santa Cruz
- City of Scotts Valley
- City of Seaside
- County of Sonoma
- City of South San Francisco
- County of Ventura
- City of West Hollywood

In addition, the following major US cities have either adopted or are proposing to adopt an EPS food service ware ban:

- Portland, OR
- Seattle, WA
- Chicago, IL
- Philadelphia, PA
- Boston, MA
- New York, NY

Status of Statewide Action

Senate Bill 568 was introduced by Sen. Alan Lowenthal, D-Long Beach during the 2011 legislative session. SB 568 would phase out EPS food service ware in California beginning in 2016. It proposes to control littered cups, bowls, trays, containers and clamshells made from expanded polystyrene and would be the first statewide ban on EPS food service ware in the United States. The proposed bill includes an exemption from the ban for communities that could demonstrate a 60 percent recycling rate for EPS food service ware. In addition, the bill gives school districts an additional 18 months to comply. A school district could qualify for an exemption from the ban if they establish a recycling program with a 60 percent recycling rate. While SB 568 was passed by the Senate in May, the bill was placed in the inactive file on Sept. 8. Proponents of SB 568 expect the bill to be re-introduced during the 2012 legislative session.

If passed, SB 568 would allow the City to obtain trash reduction credits under the Stormwater Permit. However, if the City achieved a recycling rate of 60 percent or greater, the City would become exempt from the EPS food service ware ban provisions of SB 568. It is not likely that the City could claim trash reduction credits under the Stormwater Permit if it received an exemption from a statewide ban.

Conclusions

The proposed trash reduction credits the City could claim related for taking action to specifically reduce EPS are 2 percent for prohibitions of EPS at City events and City purchase and 8 percent for a prohibition of EPS for all food service vendors. These trash reduction credits could be significantly more cost effective than reductions attributed for implementing other mitigation measures, such as trash capture devices in the storm drain system.

Research shows that there are still significant challenges associated with cost effectively recycling EPS food service ware. Recycling is not viable option for significantly reducing EPS litter.

Implementation of EPS food service ware bans in almost 50 communities have been support for the community though there is a recognized impact to the restaurant operators and patrons. By banning EPS at food service establishments, the costs of keeping it out of our neighborhoods and creeks would be borne by the users of the material rather than by the population broadly.

EVALUATION AND FOLLOW UP

Staff will actively work to support countywide adoption of an EPS prohibition, and will return to Council in 2012 with recommendations on implementing a San José ordinance in conjunction with countywide action, or solely for San José if countywide action does not occur by June 2012.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This recommendation does not meet any of the criteria listed above. This document will be posted on the City's website for the December 5, 2011, Transportation and Environment Committee, where the Council and the public have the opportunity to comment.

COORDINATION

This memorandum has been coordinated with the Office of Economic Development, the Office of Intergovernmental Relations, the City Manager's Budget Office, and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

There are no costs associated with this report at this time.

BUDGET REFERENCE

Not applicable.

CEQA

Not a Project, File No. PP10-069 (a) Staff report that involves no approval of City actions that would result in a direct or indirect physical change in the environment.

/s/
KERRIE ROMANOW
Acting Director, Environmental Services

Attachment A – Letter from County of Santa Clara

For questions, please contact Elaine Marshall, Environmental Services Program Manager, Watershed Protection Division, at 408-793-5355.

PUBLIC RECORD a

County of Santa Clara
Recycling and Waste Reduction Commission
Integrated Waste Management Division

1553 Berger Drive, Building #1
San Jose, California 95112
(408) 282-3180 FAX (408) 282-3188
www.ReduceWaste.org

July 19, 2011

Mayor Chuck Reed
City of San Jose
200 East Santa Clara Street
San Jose , CA 95113

Dear Mayor Reed,

The Recycling and Waste Reduction Commission of Santa Clara County (RWRC) is an advisory body to the County and 15 cities/towns on proposed policy for addressing regional solid waste challenges. The RWRC is composed of ten elected officials who represent the range of local government solid waste system users and perspectives. With support from professional solid waste staff, the Commission works to understand current solid waste issues, review alternatives, and, as appropriate, develop recommendations for local jurisdictions.

The issue of appropriate disposal/management of expanded polystyrene (EPS) is a hot topic in California, and the Commission has spent the last year studying the issue. Expanded polystyrene is problematic to manage at the end of its useful life and is a major pollutant in creeks and waterways that flow to the Bay and beyond. Foam comprises 15% of storm drain litter, according to California Department of Transportation. It is the second most common type of beach litter, according to a beach debris study conducted in Orange County. Unlike other items that litter the waterways, polystyrene easily breaks into tiny pieces that can be mistaken for food and ingested by aquatic animals. The smaller lightweight pieces also contribute to roadside litter. CalTrans spends $60 million annually on litter clean up costs. While the overall amount of polystyrene foam as a percentage of litter may be small, the environmental impact of this product is disproportionately deleterious on aquatic life.

These negative impacts have prompted other cities and counties in the Bay Area to enact bans on EPS. One year after implementation of the San Francisco ordinance that prohibits the use of EPS food ware, San Francisco's litter audit showed a 36% decrease in EPS litter.

On June 27, 2011 after a year of research and review by the RWRC's Technical Advisory Committee's Source Reduction and Recycling Subcommittee – including extensive input from solid waste professionals, environmental and industry groups, and other stakeholders – the RWRC considered proposing regional policy to address the impacts of EPS.

After much discussion and debate, the RWRC voted unanimously to recommend that the County Board of Supervisors and City/Town Councils adopt the following:

1. Cities and the County begin outreach and education and adopt a **policy** prohibiting expanded polystyrene food and beverage containers in all County/City cafeterias, facilities and events and prohibiting the use of expanded polystyrene by anyone or any group utilizing County/City facilities/parks. It is recommended that this be adopted **by January 1, 2012.**

2. Cities and the County adopt an **ordinance** banning expanded polystyrene food and beverage containers at all food vendors County/Citywide **and/or** consider adopting an **ordinance** requiring that all food vendors within the jurisdiction use only containers that are accepted and processed through the City's/County's landfill diversion program with the understanding that EPS will **not** be collected for recycling. It is recommended that this be adopted **by July 1, 2012.**

3. Cities and the County strongly consider a long term plan (with their franchise agreements in mind) for requiring that all food vendors within the jurisdiction use only containers that are accepted and processed through the City's/County's landfill diversion program with the understanding that EPS **will not** be collected for recycling. It is recommended that this be adopted **by January 1, 2013** (if not undertaken previously).

While it is recognized that the County and each city/town will need to consider a best fit for their jurisdiction, adopting consistent regional policy makes it easier for businesses and the public to respond to the policy. As a multi-jurisdictional Advisory Commission, the RWRC believes that by addressing this problematic component of the waste stream utilizing this timeline, we can minimize the impact of EPS on future generations.

We encourage the County Board of Supervisors and City/Town Councils to consider this recommendation at an upcoming public meeting.

Thank you for your consideration of this important issue.

Best Regards,

Jamie McLeod, Chair
Recycling and Waste Reduction Commission of Santa Clara County